

Oneida County Board of Adjustment
Tuesday, January 22, 2013
1:00 pm – Committee Room 2, Second Floor
Oneida County Courthouse, Rhinelander WI 54501

Chairman Harland Lee called the meeting to order at 1:00 p.m. in accordance with the Wisconsin Open Meeting Law.

Roll call of Board members present: Guy Hansen, “here”, Harland Lee, “here”, Phil Albert, “here”, Bob Rossi: “here” and Alternate John Young, “here,” Alternate Norris Ross, “here.”

County staff members present: Karl Jennrich, Zoning Director; Lila Dumar, Secretary III;

Other individuals present: See Sign in Sheet.

Chairman Harland Lee stated that the meeting will be held in accordance with Wisconsin open meeting law and will be tape-recorded and sworn testimony will be transcribed. The Board of Adjustment asks that only one person speak at a time because of the difficulty in transcribing when several people are talking at once. The Board of Adjustment is made up of five regular members and two alternates, both being present today, who will take part in the hearing until the public hearing is closed, at which time alternates will not take part in the deliberation. Anyone wishing to testify must identify themselves by name, address and interest in the appeal and shall be placed under oath.

Chairman Harland Lee swore in Karl Jennrich, Zoning Director; Jeff Visner, Design/Build by Visner Inc.

Secretary Phil Albert read the notice of public hearing for Appeal No. 12-011 of David Radloff, represented by Jeff Visner, Design/Build by Visner, requesting an area variance to place a 5 ft 5 ½ inch X 14 ft deck/walkway less than 75 feet from the ordinary high water mark (OHWM) of Seven Mile Lake. The proposed project is contrary to Section 9.94 A (1) OHWM Setbacks and Section 9.99 D (3) (b) (2), Shoreland Uses and Structures, Chapter 9, Oneida County Code of Ordinances. The property is located at 8924 Balsam Lane, Three Lakes, WI, being part of Government Lot 4, Section 1, T39N, R11E, PIN # TL 887-7, Town of Three Lakes, Oneida County, Wisconsin.

The Notice of Public Hearing was published in the Northwoods River News, on January 8 & 15, 2013; and was posted on the Oneida County Courthouse bulletin board on December 17, 2012. Mr. Albert provided the proof of publication; and noted that the media was properly notified.

Secretary Phil Albert noted that the Board did not conduct an onsite inspection of the

property today due to adequate documentation being provided in the appeal and sub-zero temperatures making exposure unsafe.

Chairman Harland Lee stated that the Board will hear testimony from the appellant/agent first and then the opposition. Following that, the appellant and opposition will have an opportunity for rebuttal and then closing statements. The public hearing will then be closed from further testimony. Consideration and additional questions can be asked by the Board members of the appellant or the opposition during deliberations. You may stay for the disposition of the appeal. Upon conclusion of the deliberation of the Board, the Chair will call for a motion and a second, and a roll call vote will be taken for the decision of the Board.

SWORN TESTIMONY-APPELLANT.

Jeff Visner: I'm here representing the Radloff's who are folks who have owned this property for quite some time. And they have been trying to get some work done on the place for a while and it has to do with the deck, deck replacement and roofing. So we have actually begun on the roofing so if you see pictures you'll see that we started on the roof. And we are trying to install a deck that allows the two decks to connect. What happens is this...the shaded area underneath there is deck area; this shaded area is the deck that was there. And in working with zoning, we did quite well to stay within the existing footprint, if you will, 2.6 ft less towards the water than we were. Frankly, it was their desire to clean it up. Make it more organized and make it not so big and gaudy and make it tight and safe. That deck is in bad shape. There is a valley where the connection deck that was there. This is an A-frame. So I did get some more pictures here which may be helpful. I'll send these around. I'll keep one. But what we've got is, there always was a connection deck. And that's the grey area right there. That connects the two. And in the first picture on the left you'll see that. That's where the joist came out to make that connection. It's been cut off and a temporary railing has been put there. That's on the left side of the sheet. So we had a connection piece there. Now the way zoning is written and so forth, and working with Karl and the office, it's something that we've got to be...the way it is written is we, for starters, need to not go anywhere outside of our space there. And so that angled section there was a little contrary to what the vertical section was. And secondly, the vertical section was no longer there. And so, the way it was interpreted was that we can't replace something that fell off or rotted out. That deck rotted out primarily because if you see the valley right here, coming down, it came down and splashes on that deck a lot. And they've got some make shift gutters there and they've done a number of things there. But that's that piece right here. That valley comes down. So it makes it awfully hard to work with that.

Harland Lee: Help me understand this. This...the piece that is missing is in between here?

Jeff Visner: It goes from there to the piece on the left.

Harland Lee: And it connects here?

Jeff Visner: Yes. Right where you pens are, there are some joists sticking out there. There are three joists there. Those were the joists that...

Harland Lee: And it went from here to there?

Jeff Visner: Correct. Exactly.

Karl Jennrich: In the pictures, it actually shows where that connection would be, where that gap is. Those are the pictures we took as staff, which you have for the record.

Harland Lee: And what was happening was water running down this valley here onto the top of that and kind of rotting it out.

Jeff Visner: It splashed. It didn't really run on top. But it's an A-frame, so it's quite a chute and the water came down there fast. And that's why the deck wasn't there. They took it out for safety reasons. And until they had time, or money or whatever to replace the whole deck.

Harland Lee: Is this deck the same age as the A-frame?

Jeff Visner: The one on the left is not.

Harland Lee: This is not?

Jeff Visner: No. That is the same age as the A-frame, I would guess. The one there they have actually replaced it at one time.

Guy Hansen: The one with the....

Harland Lee: Has this always been connected from the beginning?

Jeff Visner: Until probably about 3 years ago when it fell apart and they took it off.

Harland Lee: So. When it was built, this whole thing, all the way around the house was a complete thing?

Jeff Visner: It was a complete deck. Yes. And that is shown in the light grey on the plan. That was the whole plan. So as we progressed, we stayed within the boundaries and staying code compliant as much as we can, we did that. My thinking was and my rationale with Karl was that we knew where we had to go and knew we had to come here. But if we have this front perimeter and we have less deck than we had before, there was 830 sf of existing deck and we are asking for 692 sf. We don't extenuate towards any setbacks or

any borders any further than what it was, so it seemed to me to be a pretty good reasonable request in order to do that. And knowing that they did have a connection. On page 2, on the right, you see the connection. That's the only pictures the folks have, that they could find the weekend I was there. The one on the left, we see the blue water out in back, that's where the deck comes around the front and that's the guard rail, the hand rail that you see coming back, that was that connection deck. And so it was definitely was there. But it wasn't there when we went to obtain our permit.

Guy Hansen: That's the connection deck, but it looks like there's a bench there to sit on? Or are we looking at the foreground?

Harland Lee: You haven't completed any of this yet?

Jeff Visner: We have started it because we did start a permit to do two separate decks. We haven't done a lot, but we have started. Yes.

Harland Lee: Okay.

Jeff Visner: But we really focused on the roof and we put in DaVinci Shake Shingles right there. We did some demo prep. And the picture on the last paper is actually a pretty good shot at it. On the bottom, on the last page of the pictures. It shows the roofing that has been going on and the two decks that exist. They are still there.

Harland Lee: This is where the connection goes in. Right here?

Jeff Visner: Correct. Exactly. Connects those two platforms. Yes. Karl asked to bring more pictures in. I got the best I had. That's the one that shows it. And you see the valley that comes down that was probably the downfall of the rot and the reason the connection is not there has to do with that valley. That's for sure.

Harland Lee: Anything else you wish to say at this time?

Jeff Visner: Well, outside of the ramifications that pertain to existing zoning, the way it is written, we have the deck much smaller. We kept the side yard setbacks at the same or less. And the lakeside setback is less. There was a deck there. And as I read the code, it would be nice to think that we might have that in the future, to be able to, as long as we didn't expand our boundaries; as long as we didn't get any bigger, that we could make a little change for design or aesthetics or whatever. That would be a nice thing for use as a contractor. And that was kind of what we did, what we looked at. But I do appreciate the fact that somebody could have pallets down and say it wasn't a deck and all those things that take place. I'm with you on that. That I understand. But with the way it is, we are taking the normal course of what we've got. Dave Radloff wrote a letter he said..."Sounds like its cold there. I guess we are on the other end of extremes here in Fort Collins, warm and dry. I don't know how much give and take goes on in the field visit and the hearing but

one thing you might want to point out is that we have managed the forest between the cottage and the lake to make the cottage virtually invisible from the water during the months when the trees have leaves. When we bought the place it had a very open exposure with only a few large trees on the slope. We have managed the forest during the past twenty years to shield the view of the lake. We think it enhances..." So we are talking about someone that is not trying to push anything. That's what I'd say here on that.

Harland Lee: Questions for Jeff?

Robert Rossi: Did you say you had permits for the parts that you started?

Jeff Visner: Two parts.

Karl Jennrich: Yes he does.

Jeff Visner: I have them here. They are here and we were denied on this one. We applied for this one first and we were denied. Frankly, we knew that. We took the steps to get it denied so that we could...they really want to make the connection. Come outside for grilling, egress and a number of things. It means a lot to them to have it connected.

Phil Albert: How does the reconfiguration eliminate the problem of the exposure and the rotting of the existing?

Jeff Visner: Probably more because of the materials today. The treated materials and that type of thing.

Phil Albert: I see here, basically you are just taking out that corner.

Jeff Visner: It's still going to come in there some. Yes. This doesn't really solve that splash problem. We probably will work with boulders and rocks. If you look really close, he's got some make shift gutters. You can see it there. It's that wood gutter that goes under the deck. He's got kind of a wood trough if you will. We might put splash rock boulders to diffuse it instead of splashing it up all the time.

Harland Lee: It does move it away a little bit from where it was.

Jeff Visner: It does move it away.

Harland Lee: Not significantly, but some.

Harland Lee: It'll run between the two instead of over it.

Jeff Visner: Correct.

Guy Hansen: What I see here is on the one side, it looks like it's two stories, so there is an access....a walkout access from the basement on that photo and there is a deck over the top of that. And then on this side there is no walkout, so there is a pretty significant slope down to the lake. So this one here is the door to the lake and the deck over that. And then without that platform in between to go from one to the other, you'd go inside and back out or you jump down a few feet and jump back up.

Jeff Visner: Yes. Even jumping down would be....that's not even in the plans. We'd have to exit out on the other side.

Guy Hansen: Yes. So its 6 feet maybe.

Phil Albert: Which raises the question of if the new, replaced deck is permitted, would that permit allow a stairs off of this section. Oh, there is a stairs on that side, but there wouldn't be one on this side.

Karl Jennrich: There is ingress/egress on and off the deck from the outside and also a sliding patio door to get on from the inside.

Phil Albert: Right. There is a stairs on the right side here, would you allow, would you permit with a new permit, allow a stair on this side?

Karl Jennrich: I don't believe we would because we already have ingress/egress on to the deck from both inside the house and also from outside the house.

Phil Albert: Okay.

Guy Hansen: In justifying the variance...I don't know if we are there yet.

Harland Lee: Not yet.

Guy Hansen: So there is access to...there is a door inside to each section of the deck. The connection would make it able to go from one to the other.

There were no further questions for the appellant.

SWORN TESTIMONY – COUNTY

Karl Jennrich: As Mr. Visner does state, we did deny the permit under Section 9.99 D (3)(b)(2). We would allow replacement of the existing deck as it exists at the time we do the onsite. Jeff did provide me with information; I did go to his shop and meet with him to talk about the denial of the permit. He stated that at one time a deck did exist that connected this side entrance to the deck that is in the front. We did see photographic evidence.

Again, we can see that these joists were cut off. Plus if you look at the existing deck, there were stains where it was connected. I did state to him that we did discuss this situation with the Planning and Zoning Committee about when we should make a determination of what existed. The Committee, at that time, said basically at the time you do the inspection. That is what we suggested as staff; because how far back do we go in time to get evidence that something existed? A deck could have existed 10 years ago, but if they provide us with documentation that it existed, they may be allowed replacing it. In my discussions with Jeff, I did state that philosophically I agree with what he was proposing. He is doing the County a favor; so to speak, he is decreasing the size of the decking that exists there today. Plus it is...they are reducing the encroachment on the OHWM of the lake. Again, I do agree that that deck must have been there, because it doesn't make sense to have that platform to come in, go through the house to the front deck; there is no way that you could go around the side. But I state, "The ordinance is blind; and I interpret the ordinance and that's just the way it is."

Harland Lee: How long before you came to the County for a replacement permit was this removed? What length of time?

Jeff Visner: I think it is around 3-4 years.

Harland Lee: So it is that long?

Jeff Visner: Yes, I think so. I think it was just...

Harland Lee: Had they come to you at that time for complete replacement?

Karl Jennrich: We would have allowed it.

Harland Lee: You would have allowed it.

Karl Jennrich: Yes.

Harland Lee: And the fact that it is some time period, regardless of what it is; now you can't.

Karl Jennrich: Now we can't. And Jeff did make some adjustments. Because when he originally came in for the permits, there was ¼ of it outside the existing footprint. And there may have been some other discrepancies. And he did modify it to keep it within the existing footprint of what was there.

Harland Lee: Is there some reason that they didn't initiate the total replacement at the time they took this down? They must have created some hardship for themselves by taking it down and not putting it back up.

Karl Jennrich: They probably didn't know.

Norris Ross: Are they here every summer? It's not like they were sick for the last four years?

Jeff Visner: No. Their family is there. I do know, the story I got, it's a contractor's story, but I got there and they had been talking to somebody for quite a few years. I don't know who it was...but the guy was always too busy because it's kind of a hodgepodge of things to be done I think. He was very elated that I was willing to take on the project. And he did share that with me. So he was trying to get this done for awhile, I know for a couple years. His family uses it most of the summer. They like their six weeks in the fall. So they come like September thru October or something like that. So when they come for colorama, that's the time they like to use it and they make it available. It was a safety thing for the kids and family, so they took it down. That's why it came down.

Norris Ross: Is there some clever way to make a road grade in there where the water is running off so it runs out? I'm just asking that. It has nothing to do with the case. But it seems to me a synthetic wood grade appropriately placed will let the water go down. But if it goes down, where is it going, is my question.

Harland Lee: Karl, where does it say in here that if you take it down, you can't put it back up?

Karl Jennrich: It doesn't. What we say, is that it doesn't exist. I mean, if my eyes don't see it, so to speak, it doesn't exist, so how can it be replaced?

Robert Rossi: All it says is replacement and ordinary maintenance is allowed.

Phil Albert: So the decision by the Planning and Zoning Committee that if its not there when you do the site visit was arbitrary.

Karl Jennrich: Arbitrary, but we need something, I mean...how far back do you go?

Phil Albert: But if there is proof that something was there, a structure was there, by pictures and what not.

Norris Ross: They could have built a new connection, right? Because it's maintenance. And then have you come out and look at it and then request a whole new deck.

Karl Jennrich: If we wouldn't have known about it, yes.

Harland Lee: I'm looking at the ordinance itself. It really doesn't say anything about....it says ordinary maintenance and replacement is allowed.

Karl Jennrich: Correct.

Harland Lee: It doesn't say any time frame.

Karl Jennrich: It's a policy decision.

Harland Lee: Or if you take something down, now you can't replace it because you came to me six months later for your permit.

Karl Jennrich: It is a policy decision by the Department and the Committee.

Harland Lee: And as Phil says, it is somewhat arbitrary.

Guy Hansen: If we were to, like you say, there has to be some cut off point. So it seems like if we were to allow this, then the question becomes at what point can they replace it? If it was gone for one year, two years, eight years? If there was evidence that it was there before, then it starts to become an arbitrary decision. If it is not there when they go to look at it, that's fairly cut and dried.

Karl Jennrich: It's easy for us to administer if we come out there and its there.

Guy Hansen: The next question is, if we do allow it are we setting some sort of precedent of that ...for the future?

Karl Jennrich: Corporation Counsel has always stated that there is no such thing as precedent. You are looking at each circumstance differently.

Norris Ross: That's why it's called a variance.

Guy Hansen: I kind of heard that...would be handy to know that there was some leeway or something.

Jeff Visner: Karl and I talked, we had a great conversation. It would be helpful if something's were laid out a little stronger to allow something.

Harland Lee: I think that's the message I kind of draw here. That if under the Planning and Zoning, the County Board feels strongly enough about the fact that if something is removed and some time period takes place, that you can't replace it. Then you should put that in here. It should specifically say that. The point for me is that it's not there. If it's not in there, I have a tendency to say well, you are just making up some rule.

Phil Albert: The second part of that is if there is evidence that it was there, why wouldn't you accept that evidence?

Harland Lee: Yes.

Robert Rossi: It was a decision made by the Committee.

Guy Hansen: And this is a useable dwelling. The argument may have come from if someone buys a pile of lumber and a foundation along the lake, and says...

Karl Jennrich: We have discussed that issue with the Committee also. Where we get into situations....the property is zoned single family residential. In our ordinance, you are allowed a home and a guest cottage. A home for the first 100 feet of water frontage; a guest cottage for the next 75 feet. You need 175 feet of frontage to have a home and a guest cottage. We go into one or two situations a year where you look at this guest cottage and it's not really a guest cottage, it's just a dilapidated piece of junk structure that is not used. So we will not allow that to be rebuilt because it doesn't conform to the district. With this situation, again, when it says footprint, we need something to figure out what the footprint is, not something that was there. What is there today? That's what we look at as far as what is the footprint. So when we have situations where people come in with photographic evidence, because a lot of these people have home pictures of the family reunion, or birthday party or whatever event that was out there, that shows that yes, there was a deck out there at one time. If it doesn't exist at the time that we do the inspection, we just don't recognize it. This situation is a little different because even what Jeff is arguing, which we are probably going to discuss with the Committee is he wants as a builder some type of flexibility where he may be able to get some credit for some of the lost footprint that he is giving up. Giving up some of the encroachment toward the water and using that credit if you want to call it that to use it for a connection as long as it doesn't go any closer to the OHWM.

Harland Lee: Especially since there is evidence that it existed in the first place. I think when a builder can be creative enough to reduce the size of something, particularly when it is close to the water that ought to be worth something.

Karl Jennrich: That's what I said to Jeff in his office.

Jeff Visner: He did.

Harland Lee: You won't get an argument from me on that.

Guy Hansen: So the reduction was 200+ square feet?

Karl Jennrich: It's on his plans. Last page.

Harland Lee: 138 square feet less.

Harland Lee: 2 feet 6 ½ inches further from the OHWM. 9 ½ inches further from the right side lot line. The same distance from the left side lot line.

Guy Hansen: So just as a matter of something to stand on, if we take the size of the connection deck, that's going to be very close to the amount of deck that was given up. Because the addition deck is going to be an average of about 14 feet long by 5 ½ feet wide. Right? Twelve on one side and 16 on the other?

Phil Albert: But that connector that is a question here is already included in the 692 sf, is it not?

Robert Rossi: Yes. So it's not a trade off.

Jeff Visner: That's just a cad calculation, so it does it automatically.

Guy Hansen: So then. Well, it was also part of the existing deck.

Phil Albert: Right.

Guy Hansen: I was looking for something concrete and maybe this is the future, so they are giving up 130 square feet; the deck that they are adding is 130 square feet so that's an even trade off.

Norris Ross: That's assuming it never existed.

Guy Hansen: Right.

Robert Rossi: But it did.

Guy Hansen: It did, but it gets us a little bit around that issue. An even trade off.

Norris Ross: Karl, help me with the last part of 9.99 D where it says, "Combined total square footage of all decks and patios located less than 75 feet cannot exceed 200 square feet." My first question is – are there any other decks and patios on the property?

Karl Jennrich: That's for expansion.

Norris Ross: Expansion only.

Karl Jennrich: Yes. If Mr. Visner's client only had 100 square feet of deck, he would be allowed to increase the deck's square footage by 100 square feet as long as it doesn't encroach any closer than the principle structure.

Norris Ross: Just as a point of reference, this part of the deck here, it's about 250-300 square feet.

Karl Jennrich: And that's an example. That's just something we'll be taking about with the Committee tomorrow. What the Committee wanted, since we do allow up to 200 square feet of open deck or patio closer than 75 feet under the Gard/Gazebo Law, if someone had 100 square of open deck, they would be allowed to add on up to 100 square feet of open deck. This is different, because it is total replacement. So he can be above the 200 square feet.

Robert Rossi: It was beyond the 200 square feet for a long time.

Jeff Visner: Yes.

Robert Rossi: Like pre-existing.

Karl Jennrich: The ordinance allows it to be replaced within the footprint.

Robert Rossi: Yes.

Guy Hansen: What kind of railing will be around the new deck?

Jeff Visner: It's a wrought iron type pre-finished bars. Steel bars that are vertical and the rest are

Guy Hansen: So the railing will be considerably....there will be more mass to it than those other pictures.

Jeff Visner: Yes. Per code.

Guy Hansen: So a kid can't put his head through there.

Jeff Visner: Yes. The Radloff's, on their request, are doing a very nice job on it. That DaVinci roof is very expensive in and of itself. The deck will be done very nicely.

Harland Lee: Is that what you call this?

Jeff Visner: That's the brand name. DaVinci. They are synthetic slate shingles. And we actually get full ones for the edges because it barges out and we have to cut them, shape them and heat them so it melts in. But there are no bats and it's a 50 year roof plus and it's actually quite a nice roof. But they are expensive.

Harland Lee: Sounds expensive.

Guy Hansen: More than aluminum shingles?

Jeff Visner: Aluminum? Yes. Asphalt or steel? Yes, they are more expensive than that. We are doing another one...

Harland Lee: Is there any insurance advantage to that roof?

Jeff Visner: Yes. There is.

Harland Lee: I would think so. As opposed to those old shake.

Jeff Visner: Enviroshake is a company that has been out there. You probably know that name a little better. But it is a plastic shake. And DaVinci makes those shakes, they make slate and we have some places downtown that have used these and they are quite nice. The thing is they are going to look like that in 15 years as opposed to what they have now.

Norris Ross: This is where we learn stuff.

1:40 PM- Chairman Harland Lee closed the public hearing.

The Board of Adjustment deliberated Appeal 12-011 in open session.

Motion by Guy Hansen, second by Phil Albert, regarding Appeal #12-011 of David Radloff, to allow the replacement connection deck; accept the reduction in square footage as proposed; and to direct staff to issue a zoning permit as was previously denied. The motion carried unanimously on a roll call vote.

Motion by Harland Lee, second by Guy Hansen, to extend the decision filing date to Friday, January 25, 2013. The motion carried unanimously.

1:48 pm. - The public hearing was adjourned.

Harland Lee, Chair

Phil Albert, Secretary
